

10 722 362  
MAY 10 1897  
JAMES H. MCKENNEY,  
CLERK.

Brief of Parker, Parker, Hackett  
for D. C. Con mo

Supreme Court of the United States.

Filed May 10, 1897.

RODMAN M. PRICE *et al.*

*Plaintiffs in Error.*

ANNA M. FORREST, *Adm'r.* *et al.*

*Defendants in Error.*

No. 727.

MOTION TO DISMISS OR TO AFFIRM.

CORLANDT PARKER,  
RICHARD WAYNE PARKER,  
FRANK W. HACKETT,

*Counsel.*

WASHINGTON, D. C., CITY OF WASHINGTON.

## TABLE

Motion to dismiss or allow	1
Verdict	2
Affidavit of service of motion, &c.	3
Extract from Constitution and Statutes	4
Bill	5
Plan	20
Memoranda of proceedings	21
Opinion (Head Joses)	22
Answer	26
Final decree of Chancellor	27
Final decree of Court of Errors and Appeals	28
Opinion	29
Assignment of errors	29
Bond	33
Citation	34
Writ of error	35
Vote of Court of Errors and Appeals	37

### POSTSCRIPT.

---

The papers for this motion had to be prepared and sent off in haste in order to get service in season to bring on the motion at this term. It so happened that a copy of the record was not accessible at the moment; and consequently one or two slight inaccuracies of statement appear in the brief, for which the indulgence of the court is asked that they may be here corrected, as follows:

Of the plea it should have been said that defendants asserted that the Act gives them the money because they are children of the late Rodman M. Price, and thus original takers under the word "heirs." Moreover, it is not the *plea* that sets up the statute provision as to assignments; but this defense against our bill of injunction, if it may be said to be set up at all, is in the *answer*.

The contention of defendants should have been stated as not only that Congress meant to make a gift (as in *Emerson vs. Hall*, 13 Pet., 409), to their father, but by the terms of the act to his heirs as a class, and not to legal representatives.

Our position is that the statute plainly employs the word "heirs" in the sense of "legal representatives," Price being a man well advanced in years; that a debt was determined to exist which Congress desired to pay, and had directed to be ascertained; that such ascertainment took place; that part of the money was paid, Price using it in contempt of the New Jersey court, and that by operation of the law of the State an assignment had been made in his lifetime, of what remained and of Price's right to it to Borchering, receiver.

The decision in 6 Dickinson, 25, settled that. The court will respect the adjudication by which it was decreed not

that the money should be paid to the receiver, but that it was *payable* to him.

The State court in its final decree decides nothing more than that the heirs of Price cannot now receive this money as original takers, the amount having been credited to Price in his lifetime; and the right to collect the balance having passed by operation of law to the receiver before the death of Price.

The decree appealed from is a perpetual injunction founded upon the plain and unquestionable meaning of the Act of Congress; and there is nothing else before the court, in the record, than the construction of that Act.

CORTLANDT PARKER,  
RICHARD WAYNE PARKER,  
FRANK W. HACKETT,

*Counsel, etc., for the purposes of this motion.*

On account of its length, the text of the opinion of the Court, disposing of the plea is omitted. See page 25. We have printed, however, the head notes which form a part of the record. The case is reported at 35 *Atlantic Reporter*, 1075, and 54 *N. J. Equity*, 669.

IN THE  
Supreme Court of the United States.

OCTOBER TERM, 1896.

---

RODMAN M. PRICE, FRANCIS PRICE, MAD-  
ELINE PRICE, GOUVERNEUR PRICE, and  
E. TRENCHARD PRICE, Plaintiffs in  
Error,

*vs.*

ANNA M. FORREST, Administratrix of SAM-  
UEL FORREST, Deceased, and CHARLES  
BORCHERLING, Defendants in Error.

No. 797.

**MOTION TO DISMISS OR TO AFFIRM.**

Come now the defendants in error and move the court to dismiss the writ of error in this case for want of jurisdiction, because the said writ purports to have been allowed by Alexander T. McGill, "Chancellor, Presiding Judge of the Court of Errors and Appeals in the Last Resort in all Cases in the State of New Jersey," whereas the said McGill was not and is not Chief Justice or Judge or Chancellor of the said court rendering the judgment or passing the decree complained of in said writ of error; and was without authority to allow a writ of error in the said proceeding; and because the said writ has not been allowed either by the Chief Justice, or Judge, or Chancellor of the court rendering the judgment or passing the decree complained of, or by a Justice of the Supreme Court of the United States; or, if the writ of error shall not be dismissed, that the decree of the said Court of Errors and Appeals be affirmed, on the ground that although in the opinion of this court the record may show that this court has jurisdiction, it is manifest that such

writ of error was taken for delay only, and that the question on which jurisdiction depends is so frivolous as not to need further argument.

CORTLANDT PARKER,  
RICHARD WAYNE PARKER,  
FRANK W. HACKETT,

*Counsel for ANNA M. FORREST, Administratrix, and CHARLES BORCHERLING, Receiver, for the purposes of this motion.*

TO BEDLE, MCGEE & BEDLE, *Solicitors for the Heirs of RODMAN M. PRICE, Plaintiffs in Error:*

Please take notice that on the 10th day of May, A. D. 1897, the motion, of which the foregoing is a copy, will be submitted to the Supreme Court of the United States for the decision of the court thereon. Annexed hereto is a copy of our brief or argument in support of said motion.

CORTLANDT PARKER,  
RICHARD WAYNE PARKER,  
FRANK W. HACKETT,

*Counsel for ANNA M. FORREST, Administratrix, and CHARLES BORCHERLING, Receiver, for the purposes of this motion.*

---

### BRIEF.

This is a writ of error taken to the Court of Errors and Appeals of the State of New Jersey to secure the reversal of a decree of that court perpetually enjoining certain persons, claiming to be the heirs of the late Rodman M. Price, from claiming and receiving from the Treasury of the United States about \$22,000, being a balance due on the books of the Treasury upon the accounts of the said Rodman M. Price, late Purser U. S. Navy, adjusted under Act Feb. 23, 1891.

The following is the Act of Congress upon which there became due and payable to the said Price the sum of \$75,000:

"An Act for the relief of Rodman M. Price.

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Secretary of the Treasury of the United States be, and he is hereby, authorized and directed to adjust, upon principles of equity and justice, the accounts of Rodman M. Price, late Purser in the United States Navy, and Acting Navy Agent at San Francisco, California, crediting him with the sum paid over to and receipted for by his successor, A. M. Van Nostrand, Acting Purser, January fourteenth, eighteen hundred and fifty, and pay to said Rodman M. Price, or his heirs, out of any money in the Treasury not otherwise appropriated, any sum that may be found due him upon such adjustment.

"Approved February 23, 1891."

The Treasury officials under this act stated the accounts of Price, crediting him with the sum of \$75,000, and made out certain drafts in payment of the larger part of that sum. The defendant in error, Anna M. Forrest, administratrix of the estate of her late husband, Samuel Forrest, in proceedings in execution upon a judgment obtained by the said Forrest in his lifetime against Price, secured an injunction order against Price from receiving any drafts in payment of that sum, or any part thereof, from the Treasury. In violation of this order Price took the drafts and cashed them and subsequently, on being found in the State of New Jersey, was held in contempt by the chancery court.

There remained a balance of a little over \$22,000 that had been held up at the Treasury for the reason that Price was surety upon a bond. This obligation was later released by the proper officials. Meanwhile the chancery court of New Jersey, on the 10th of October, 1892, had appointed the defendant Borchering, receiver of "the property, things in action, belonging or due to or held in trust for said Price," at the time of the issuing executions on the judgment obtained by Forrest and revived by his administratrix, or at any time afterwards, "with authority to possess, receive, and sue for such property or things in action;" and the said Borchering gave bond and entered upon his duties.

The said Price died intestate on the 7th June, 1894, and no administration has been taken out on his estate in the State of New Jersey. Mrs. Forrest and Borchering, receiver, filed their bill 5th July, 1894, as a bill of revivor, and in the nature of a supplemental bill, against the heirs of Price and laid claim to this balance in the Treasury, asking that the heirs be perpetually enjoined from applying to the Treasury for the payment of the same, and that the court decree that the said sum was due and payable to the said Borchering as receiver. Defendants filed a plea to this bill setting up (1) that the legislation of Congress was in the nature of a gratuity to Rodman M. Price, (2) that the assignment to Borchering, receiver, had no effect upon this money in the Treasury because of the provisions of Section 3477 Revised Statutes, in regard to assignments. This plea was overruled by the Chancellor, and an appeal taken to the Court of Errors and Appeals, and the decision of the Chancellor was affirmed. The cause went back to the Chancellor. Defendants filed their answer setting up the same defence as before. Upon bill and answer the Chancellor decreed an injunction, and that the money was payable to Borchering, receiver. Upon appeal, the Court of Errors and Appeals affirmed this decree. To this final judgment the heirs of Price take a writ of error to this court.

#### I.

The Chancellor of New Jersey had no power to allow this writ of error. He was not the presiding judge of the court that passed the decree. The constitution of New Jersey provides that "when an appeal from an order or decree shall be heard, the Chancellor shall inform the court in writing of the reasons for his order or decree, but shall not sit as a member or have a voice in the hearing or final sentence." Article VI, Section XI, subd. 5, General Statutes New Jersey, 1896, Vol. I, page *lix*. Section III, of the Act relative to the Court of Errors and Appeals, provides that "the Chan-



cellor when present shall be the President of the court; in case of his absence, the Chief Justice of the Supreme Court, and in case of his absence, the senior in office of the Justices of the Supreme Court who may be present." Gen. Stat. N. J., Vol. 1, page —.

For obvious reasons it is required that the court itself hearing the case below shall pass judgment upon the question whether the writ of error shall be allowed or not. The court in performing this duty speaks through its presiding officer. Hence, the need that the justice allowing the writ of error shall be one of those who sat at the hearing below.

Chancellor McGill was disqualified to sit at the hearing of the appeal from his own decree. As a matter of fact, he did not sit in the court, and was not a justice of the court passing this decree. We respectfully submit that this writ of error is not properly allowed, and the court is without jurisdiction.

## II.

The decision of the court below should be affirmed.

1. The contention that the heirs of Price are entitled to this money, because Congress meant to make a *gift* of it to Rodman M. Price, purser in the navy, hardly deserves argument. *Forrest vs. Price*, 6th Dickinson, 25, and the same case on appeal, 35 Atlantic Reporter, 1075. The money was put to the credit of Price in his lifetime, in the usual manner of settling accounts of a salaried officer of the United States. The balance now in the Treasury was Price's in his lifetime; and if the heirs have any claim to it at all, it is by virtue of heirship, and not from the statute.

2. The objection that the order of the Chancery Court in New Jersey in appointing a receiver, did not have the effect to carry to such receiver the property in the claim at the Treasury, is equally groundless. Section 3477 Statutes with regard to the assignment of claims has been so frequently interpreted by this court that its construction may be considered as settled.

Its purpose has been declared several times as being for the protection of the Treasury, not of the claimant. *Bailey vs. U. S.*, 109 U. S., 432.

Assignments by operation of law are not within the mischief to be prevented. Assignments for the benefit of creditors (*Goodman vs. Niblack*, 102 U. S. 556), and assignments in insolvency are not prohibited. *Butler vs. Goreley*, 146 U. S., 303).

The same principle applies where chancery appoints a receiver. This is merely the application of the principle to another case illustrating an assignment by operation of law. This point has been passed upon by the Court of Claims, which treats an assignment to a receiver as comprehended within the language of this court in other cases. *Redfield vs. U. S.*, 27 Ct. Cl., 393.

Here the doctrine of *Walston vs. Nevin*, 128 U. S., 578, has full force. Plaintiffs in error cannot expect to maintain their writ when the underlying principle concerned has been determined by this court in numerous instances against the view which they assume.

Besides, as to so much of the decision below as sustains a perpetual injunction against the heirs, which these plaintiffs contest because of the statute in regard to assignments, it is enough to say that it does not involve a federal question, so as to give them the right to come here. The courts of New Jersey have full power to determine the extent to which they will enjoin their citizens from proceeding to lay claim to money in the Treasury. They act *in personam*. The State court does not seek to restrain the officials of the Treasury. It simply declares that, as between creditors of Price and heirs of Price, the latter shall not collect the money.

These proceedings are in execution upon a judgment that far exceeds the money now available. The payment of this money to the receiver, as representing Price and his estate, has been delayed since July, 1894. We have lost interest on this sum during this litigation in the State courts. No

supersedeas is given upon this writ of error. The writ is clearly taken for delay. Meanwhile, we are still losing more interest. The delay works an injustice to Mrs. Forrest. The plaintiffs have had ample opportunity below to assert their right in law to this fund. Enough of the record is disclosed to show how baseless their claim is. We therefore respectfully ask that this court affirm with costs the decree of the court below.

CORTLANDT PARKER,  
 RICHARD WAYNE PARKER,  
 FRANK W. HACKETT,  
*Counsel for Defendants in Error.*

---

RODMAN M. PRICE, <i>et al.</i> , Plaintiffs in Error,	}
<i>vs.</i>	
ANNE M. FORREST, Admx., <i>et al.</i> , Defendants in Error.	

DISTRICT OF COLUMBIA, ss :

Personally appearing Frank W. Hackett, at Washington, in said District, on oath deposes and says that: On Saturday evening, April 17th, A. D. 1897, at 8.15 P. M., he deposited in the mail box at the station of the Baltimore and Potomac Railroad, in the city of Washington, D. C., a package addressed to J. Flavel McGee, Esquire, Jersey City, New Jersey, postage paid, with a special delivery stamp thereon, which contained a copy of the foregoing motion and brief, except that he has since discovered that in the caption of the notice the name of Rodman M. Price, one of the heirs, had not been included; said package was mailed in season to reach Jersey City on the morning of the 18th in due course of mail; and that said McGee was of counsel for the heirs, plaintiffs in error in this suit.

FRANK W. HACKETT.

Subscribed and sworn to at the said City of Washington,  
this 3d day of May, 1897.

Before me,  
[L. s.] CHARLES W. STETSON,  
Notary Public.

---

(From General Statutes of New Jersey.)

Vol. I, page lix.

ARTICLE VI.

(Constitution.)

JUDICIARY.

*Section II.*

\* \* \*

1. The Court of Errors and Appeals shall consist of the chancellor, the justices of the supreme court, and six judges or a major part of them; which judges are to be appointed for six years.

\* \* \*

5. When an appeal from an order or decree shall be heard, the chancellor shall inform the court in writing, of the reason for his order or decree; but he shall not sit as a member or have a voice in the hearing or final sentence.

\* \* \*

Vol. I, page 1021.

COURTS.

I. COURT OF ERRORS AND APPEALS.

An Act relative to the Court of Errors and Appeals.

\* \* \*

3. That the chancellor when present shall be the president of the court; in case of his absence, the chief justice of the supreme court; and in case of his absence, the senior in office of the justices of the supreme court who may be present.

\* \* \*

# TRANSCRIPT OF RECORD.

## BILL.

*In Chancery of New Jersey.*

Between ANNA M. FORREST, <i>Admx. of</i>	} Bill for Revivor and Relief and Order for Inj.
SAMUEL FORREST, <i>Deceased, Compt.,</i>	
and	
RODMAN M. PRICE.	

Filed July 5, 1894.

TO THE HONORABLE ALEX. T. MCGILL,  
*Chancellor of the State of New Jersey.*

Humbling complaining sheweth unto your Honor your oratrix, Anna M. Forrest, widow and administratrix of Samuel Forrest, deceased, of Charlestown, Virginia, and Charles Borchering, of the City of Newark, County of Essex, and State of New Jersey, the said Anna M. Forrest, Administratrix, as aforesaid, filing this bill of complaint by permission of the court as a bill of revivor and original bill in the nature of a supplemental bill to the bill of complaint, filed by her as hereafter stated, against Rodman M. Price, of Bergen County, New Jersey, now deceased, jointly with his wife, Matilda C. S. Price and Francis Price, which bill was filed on or about the 30th May, 1874, and the said Borchering appointed receiver in said cause, of the goods and chattels, rights, credits, property and effects, of the said R. M. Price, joining with her in the prayer hereof.

And thereupon your oratrix alleges that on or about the day and year aforesaid, your oratrix filed as aforesaid in this court, her bill, in which she alleged that about the 2d June, 1857, in the Supreme Court of New Jersey, said Forrest did recover against said R. M. Price a debt of \$17,000, and also \$78.04 costs; that about the 7th Nov. in said year said Forrest sued out a writ of *fiery facias* upon said judgment, but the same was returned unsatisfied; that said Forrest departed this life about the 7th day of Nov., 1860, intestate, the said judg-

ment still remaining unpaid and unsatisfied; that about the 22d Jan., 1874, administration of the goods, &c., of the said Forrest, deceased, was granted to your oratrix by the then Ordinary of this State; that your oratrix shortly afterwards sued out of said Supreme Court against said R. M. Price, a writ of *scire facias*, to revive said judgment; that about the 15th April, 1874, judgment was entered upon said writ that your oratrix should have her execution of the said debt and costs with interest; that on or about the 14th April, 1874, your oratrix sued out of said Supreme Court, a writ of *fiery facias* directed to the sheriff of the county of Bergen, commanding, &c., he should cause to be made said debt of \$17,000 and costs, and if sufficient goods and chattels of said Price could not be found, then that the sheriff should cause said sum to be made of the real estate whereof defendant was seized on said 2d June, 1857, &c., &c.; that in said bill your oratrix set forth certain facts intended to show an interest to be possessed by the said Price in certain lands and other property in the county of Bergen, &c., &c.; also, allegations intended to show the possession by said Price of a claim of money upon a judgment against Erasmus B. Keyes and Edmund M. Scott; and that said Price had other property to the amount of many thousand dollars, exclusive of exemptions, which your oratrix had been unable to reach by execution, &c., &c. Said bill prayed discovery from said Price, of all property, &c., &c., and that the same might be appropriated to the payment of said judgment and costs, &c., and that some person might be appointed receiver; and that said Price might be enjoined, &c., from assigning real and personal property to which he was in any way entitled, &c., and such injunction was on the filing of said bill granted, and still remains.

Your oratrix shows that said R. M. Price, Matilda C. S. Price, his wife, and Francis Price filed their answer to said bill, in which said Rodman admitted the recovery of said judgment by the said Forrest, but alleged that the judgment was owned, as he believed, by Keyes, the person against whom the judgment in favor of said Price mentioned in said bill of complaint was obtained; that Keyes had paid Forrest the whole of the claim on which said judgment was founded; that Keyes had assets of this defendant years before Forrest recovered his judgment; that at the time of said Forrest bringing his suit said Price had already sued said Keyes for the money so recovered in the name of said

Price by the said judgment against Keyes in the State of New York; that by reason of hostile relations between said Keyes and said Price, the latter was unable to establish the payment of the claim of said Forrest, and was obliged to let said Forrest suit go by default, and he insisted that the said Keyes by his letters was estopped from alleging that there was nothing due on the said Forrest judgment, and the other defendants allege that they believe his statement to be true.

Said Price denied that any part of the properties mentioned in the bill were his, or that he had any interest therein; your oratrix shows that after filing of said answer, the cause slept until about the 9th August, 1892, when your oratrix filed therein a petition in which she stated that since filing the bill, no payment had been made, nor had complainant been able to find personalty or real estate of the said Price; that the whole of said judgment, with interest remained due, that execution *de bonis et terris* was issued and returned unsatisfied; that subsequently an alias writ of *fieri facias de bonis et terris* was issued, &c., but likewise returned unsatisfied, and that 4th August, 1892, your oratrix caused another writ of execution *de bonis et terris* to be issued, which execution was returned unsatisfied, no goods or lands being found whereon to make the levy. Your oratrix then stated on information that the sum of about \$45,000 was about to be paid to said Price, being a sum found to be due him from the United States, by the delivery to Price or his attorneys of a draft of the treasurer of the U. S., payable to Price's order, that said draft was to be made and the transaction closed upon the 15th of the then month of August.

Your oratrix showed that said Price had always exhibited great unwillingness to satisfy any part of said judgment although said Price was the attorney in fact of said Forrest for the sale of certain land to him belonging in the State of California, and said Price made sale of said land and received a sum exceeding \$20,000; that instead of paying over the money he retained the sum of about \$17,000 and refused to pay over the same to said Forrest. Your oratrix stated that she believed said Price would, if he obtained the money coming from the U. S., at once take means to put the same beyond the reach of your oratrix unless restrained, and prayed that injunction might issue to the said R. M. Price forbidding him to make endorsement of any such draft, &c., to any other person whatever, except your oratrix

or her attorneys. Further she prayed a receiver might be appointed of said draft or other negotiable security, and that said Price might be ordered immediately on receipt of said draft, to endorse the same to said receiver, &c.

Your oratrix obtained from your Honor a rule, on the 8th August, 1892, returnable on the 12th Sept., following, that said Price should show cause, &c., and said rule directed that said Price should be and was thereby restrained and enjoined, etc.

Your oratrix shows that a certified copy was duly served upon the said Price upon the 10th August, 1892; that nevertheless after such service about the 5th day of Sept. in said year said Price received at Washington, four several drafts, dated 5th Sept. aforesaid, addressed to the Assistant Treasurer of the U. S. in New York, and payable to his order as late Purser U. S. N., such drafts being one \$2,704.08, another for \$13,500, a third for \$20,000 and a fourth for \$9,000; that about the 17th of Sept. aforesaid, said Price endorsed and received the money for said draft for \$13,500, without permission of this court; that about 3d Oct., 1892, said Price endorsed and received the money for said drafts for \$20,000 and \$9,000 respectively, also without permission of this court, and about 5th Sept., said Price endorsed said draft for \$2,704.08, and received the money therefor without permission of this court, and that he received all of said moneys and applied them to his own use.

Your oratrix further shows that on the same 3d Oct., 1892, on which he received the money for and endorsed said drafts for \$20,000 and \$9,000 respectively, said Price filed an answer in which he stated that the said judgment against him was paid, and further stated that there was a sum of money due to him from the U. S., voted to him or his heirs by Congress, and that about \$45,000 was to be paid, but that said claim was not amenable to the payment of complainants' claim even if valid, nor could it be lawfully paid to any receiver.

Your oratrix shows that it appears by the record of said judgment that the same, instead of being by default, was a judgment upon confession, pleas in defence of said Price being by him first withdrawn, and that on the same day of his swearing to and filing said answer, said Price endorsed and received the money for the two drafts for \$20,000 and



\$9,000 respectively, the rest of said \$45,000 having been previously paid to him.

Your orator shows that on the 10th October, 1892, it was ordered by this court that your orator, said Borchering, should be and he was thereby appointed receiver of the property and things in action belonging or due to or held in trust for said Price at the time of issuing said executions heretofore mentioned, or at any time afterwards, and especially of said four drafts with authority to possess, receive, and it may be in his own name as such receiver sue for such property or things in action, and it was made thereby the duty of said receiver to hold said drafts subject to the further order of the chancellor herein, and said receiver was required to give bond for the faithful performance of his trust for \$40,000, &c., and the said Price was ordered to convey and deliver to said receiver all such property and things in action, and the evidence thereof, and especially forthwith to endorse and deliver said drafts respectively, and each of them to said receiver and the said Price, and all agents or attorneys by him theretofore or thereafter to be appointed were thereby enjoined and restrained from intermeddling with said receiver in regard of said drafts, and ordered and directed if in possession or control thereof, to make delivery to him of the same, and to do all things necessary which should be within their power to put said receiver in possession and control thereof, provided nevertheless that if said drafts, excepting said draft for \$13,500, should be delivered with the endorsement of said defendant to the clerk of this court, the proceeds thereof to be deposited to the credit of this cause on or before the 13th Oct. instant, then said order was to be void, and said Price was thereby enjoined and restrained from any endorsement or appropriation of any of said drafts otherwise than to said receiver or to said clerk for deposit as aforesaid. Your orators show that said drafts mentioned in the proviso contained in said order were not delivered as thereon stated, whereby said order remained in force.

Your orators show that said receiver complied with said order by filing such bond, and filed his official oath according to law, and entered upon the duties of his said office.

He thereupon caused to be served upon said Price a true copy of said order, and demanded of him in writing annexed thereto that he deliver to him the said receiver, said drafts of \$9,000, \$20,000 and \$2,704.08, and further demand was

made that if said drafts or either of them were not in his physical possession but were held for him or subject to his control, whether alone or jointly with any other person, or deliverable upon the joint order of said Price and any other person, he was thereby required to give his consent and order in writing for their delivery to the said receiver, or to his order, and to direct the consent and order thereof to be given of any agent, attorney or trustee for him, and to do all things necessary within his power to put said receiver in possession and control thereof.

Service of said order, together with said demands, though sought to be made upon the 12th October, 1892, or thereabouts, was not made until on or about the 22d July, 1893, because said Price was not to be found within this State, but notice of said order without said demand and by delivery of a copy thereof to him, was given to said Price elsewhere than in this State, shortly after the date thereof. And your orators show that on or about the       day of       , 1892, an attachment was issued against said Price for contempt of this court in disobeying said order, and such proceedings were had thereon that upon full proof of such disobedience, said Price was convicted of such contempt by an order bearing date the 18th May, 1894, and was directed to pay over to the said receiver the sum of over \$30,000, besides a fine of \$50 and costs.

Said order further directed that on failure after five days service of a copy of said order upon him, to comply with the same, he should be imprisoned in the county gaol of said Bergen county until said order was performed.

Your orators further show that said \$45,000, or thereabouts, the amount of said four drafts, was part of a certain debt of \$76,000, awarded to the said Price by the officers of the Treasury Department under an act of Congress passed Feb. 23d, 1891, and agreed to be paid to him in conformity with said act.

The drafts for only the four amounts heretofore mentioned were issued and given to said Price on account of said debt, said officers at first believing there was a counter claim for a debt due by said Price to the Government of the U. S., but afterwards and about the       day of       , 1893, it was made known to your orators that the Treasury Dept. had reconsidered its determination and was about to pay unto said Price a sum of about \$31,000 still remaining due upon said sum awarded, and that said Price and his attorneys

were actively seeking to obtain payment of the same, and thereupon by order of this court and upon proof of a demand made by the said receiver upon said Price, that he should sign and file his consent in writing with the Treasurer of the U. S. that said money remaining due as aforesaid should be paid to the said receiver, and upon further proof that said Price refused so to do, another order was made by this court, dated on the 18th May, 1894, by which said Price was directed to execute two certain instruments in writing, which before that time he had been required by this court to sign, seal and deliver, one of them consenting that the balance of said money due should be paid unto said Borchertling, receiver, which consent should be filed with said treasurer, and the other being an assignment in writing under his seal proposed to be made by him of all his property, real and personal, of all rights and credits to him belonging, and said last mentioned order directed that it should be served upon said Price by a delivery to him of a duly certified copy thereof.

Your orators show that at the time of service upon him of said duly certified copies of said orders respectively, said Price was sick, but was of sound mind, and capable physically of obeying the same, and especially of obeying the last mentioned order, and executing and sending to their proper destination the two instruments in writing last above described; your orators show that the said Price after service made upon him of said orders, and on or about the 8th June, 1894, departed this life, at his residence, in the County of Bergen.

Further your orators show that neither in the Prerogative Court, nor before the Surrogate of Bergen County, or the Orphan's Court, thereof, has any last will of the said Price been presented for probate, nor has application been made for the issue of letters of administration as in case of intestacy to the said R. M. Price, deceased. Your orators show that, although certified copies of said orders, on or about the 28th May, 1894, were duly served as aforesaid, yet the illness of said Price prevented any enforcement of said first mentioned order, and he departed this life without having paid said money in said order directing his incarceration in case of disobedience to the sum mentioned, and without affixing his signature to the instruments annexed to the second of said orders last mentioned, or to either of them.

Your orators are without remedy for the recovery of the

money belonging to the said receiver and due to the said administratrix, and the object of the said bill is entirely frustrated, and your orators are advised it is necessary that remedy should be sought in this court against whosoever should be admitted, either as executor or administrator, to represent the said R. M. Price, deceased, while as to the said balance of said sum of \$76,000 remaining in the hands of the Treasurer of the U. S., and the disposition thereof according to law, your orators are without adequate remedy because of the legal impossibility of enforcing a decree directing the payment by the Treasury Department of the U. S. of said monies unto said receiver. Your orators show that nevertheless the officers of the Treasury are desirous of doing right and justice in the premises; that demand has been made by the said receiver, upon the Treasurer of the U. S. for the payment of said balance of money to him; that said treasurer does neither consent or refuse so to do, and awaits the determination by some lawful tribunal of the right of said receiver in the premises. Your orators believe that on the decree by this court that said receiver is entitled to said balance, and notice thereof duly given to the Secretary of the Treasury said decree will be respected, and said balance handed over.

Your orators further show that on the 9th June, 1894, being the day after the death of said R. M. Price, deceased, Francis Price, Rodman M. Price, Madeline Price, E. Trenchard Price, and Gouverneur Price, children of said R. M. Price, deceased, executed a power or powers of attorney to John C. Fay, of Washington, attorney in his lifetime for said R. M. Price, deceased, and who appeared in the course of the litigation in respect to said U. S. drafts in this court as such attorney; and by such powers of attorney authorized said Fay to apply to the Secretary of the Treasury to pay to them the balance standing to the credit of said R. M. Price under said Act of February 23d, 1891; that said parties are now pressing said claim with the Secretary of the Treasury, insisting that by the true construction of said Act said balance standing to the credit of said Price, deceased, belonged to them as his heirs at law, and that the said receiver has no right in the law thereto, being the same insistent made by said Price, deceased, in his answer to said petition.

Your orators show that the Treasury Department has settled with the said R. M. Price and credited him upon its books with the sum of about \$76,000, as being due to him,

that it has, as aforesaid, paid to him through said four drafts, a large portion of said money, reducing the said credit thereby; that it has further paid unjustly and the same was received by the said Price and his attorneys in fraud of the law and the orders of this court heretofore rendered in said suit hereby sought to be revived, and of the bill to which this bill is intended to be supplemental, over \$9,000, thereby reducing the balance apparent on said books as due to said Price in his lifetime to the sum of about \$23,000; that under a proper construction of said law, and by force of said receivership, and the laws of New Jersey where said Price resided, said Price's right to all the balance aforesaid of said moneys passed to the said receiver, and remains still in him; that in the true construction of the words directing payment of said money to said Price and to his heirs, "to his heirs" are simply words importing that the monies he paid to the legal representative of said Price, in case, before such award, he had departed this life; that the said receivership having worked a legal assignment by said Price to the said receiver, of all his rights, credits and property, of whatever description, he is to be held in law as having received said monies and made assignment thereof unto the said receiver.

Your orators insist that there is no pretense of right in said children, although heirs of said Price, to make the demands aforesaid, or seek payment of the said balance to them. Your orators further show that it was argued before this court in the discussion of the motion for the last two orders by counsel for the said Price in the presence of two at least of the said children, and with their consent, as set up in said Price's answer to said petition that under proper construction of said Act of Feb. 23, 1891, said monies in case of the death of said Price passed to said children as his heirs at law; and the same insistment was made as a reason why said order for assignment in writing thereof and the consent in writing to such payment should not be granted, and said argument was duly considered by this court, which declared in its opinion filed, and under which said orders last mentioned were made, that said construction was erroneous, and that said monies in case of the death of said Price would, had there been no receivership, go to his executors or administrators, but in view of said receivership that the same belongs to the said receiver.

Your orators show that the action of said children in de-

manding said balance is in fraud of said orders made by your Honor, with which orders they were all acquainted, some at the time of delivering the same to said Price, deceased, and the others immediately thereafter; that some days before said service true copies of said orders were furnished to the counsel of said R. M. Price, and, as your orators believe, were communicated by him to said children; that knowledge thereof was also communicated through some one or more of said children or otherwise, to said Fay, and that the application made to said Secretary of the Treasury, as aforesaid, is in pursuance of agreement and conspiracy among said parties, including said attorney Fay, to defeat the operation of said orders.

Your orators repeat that the right to said monies and to all estate, real and personal, in possession or action, belonging to the said Price at the said date of said order appointing your orator, the said Borchertling receiver in this cause, and at the date prior thereto, of the issue of executions mentioned in said order, vested by law in said Borchertling receiver as aforesaid, and has been so adjudged after careful consideration of this court; that by orders and process issued in this cause said Price and said Fay, and all claiming under said Price, were enjoined from demanding said monies; that the receipt by said Fay of a part of said monies was in direct disobedience of the order of this court, and that action such as that now taken on the part of the said children of said Price and of his said attorney, to hold or obtain any part of said property or rights in the monies awarded to said Price, constitutes a conspiracy to thwart and defeat the orders and decrees of this court, and contempt of its authority and jurisdiction, and should be prevented by its decree.

Your orators insist that the disposition of said money and the adjudication of the right thereof belongs in law and in equity exclusively to this court, whose receiver claims the same under the law and his appointment, and that the action of said children of said Price in seeking to defeat the claim of said receiver, is a contempt of this court. Your orators further show that, no application having been made by any person in any court having lawful jurisdiction for letters of probate of any will of the said R. M. Price, deceased, or for administration of his estate, as an intestate, application has been duly made to the Prerogative Court of New Jersey, and letters of administration *ad prosequendum* have been granted unto Allan L. McDermott, wherefor said Allan L.

McDermott is hereby made defendant to this bill of complaint, to the end that decree may be made for the revival of said suit and for such further decree, &c., to the end that the said John C. Fay, Francis Price, Rodman M. Price, Madeleine Price, E. Trenchard Price and Gouverneur Price, joined as defendants in this suit with the said Allan L. McDermott as administrator *ad pros.* as aforesaid, may answer the premises, and that it may be decreed as follows:

1. That said bill filed in 1874, may be revived, and said administrator *ad pros.* be adjudged to be a proper party thereto.

2. That the said Francis Price, Madeline Price, Rodman M. Price, Gouverneur Price, E. Trenchard Price and John C. Fay, may each and every of them be perpetually enjoined and restrained from making any demand upon or application to the Government of the U. S., or the Secretary of the Treasury, or any officer of said treasury, or from receiving from the U. S. or its said secretary of the treasury, or any officer thereof, any part of the money now remaining in the Treasury of the U. S., and which was awarded to the said R. M. Price as aforesaid.

3. That the parties above named be ordered and decreed to pay to your orator the said Borchering, receiver as aforesaid, to be by him disposed of under the orders of this court, any part of said money which they respectively have received or hereafter may receive.

4. That said administrator *ad pros.*, or any executor or administrator of said R. M. Price, deceased, who shall hereafter be admitted and made a defendant may likewise answer this bill and be decreed to deliver and pay over to said receiver, all property of said Price, which shall come to the hands of said executor or administrator, and to that end, he and the said children of said Price, do make discovery of all such property.

5. Other and further relief, etc.

6. Prayer for injunction and subpoena.

CORTLANDT & WAYNE PARKER,

*Solicitors of said Complainants.*

Affidavits of Cortlandt Parker and Frank W. Hackett.

July 2, 1894. Injunction issued restraining defendants from applying to the Treasury or receiving the money, or any part, credited to Rodman M. Price, deceased.



22 Sept., 1894.

JOINT AND SEVERAL PLEA OF MADELINE PRICE AND  
GOVERNEUR PRICE, DEFENDANTS.

Rodman M. Price died 7 June, 1894, intestate, leaving him surviving Matilda C. S. Price, his widow, and Francis Price, Madeleine Price, Rodman M. Price, Gouverneur Price and E. Trenchard Price, heirs at law. Said Price was not seized at the time of his death of any messuages, lands, &c., in New Jersey, or elsewhere, and no messuages, lands, &c., descended to these defendants or either of them from their said father; neither were any lands, &c., devised by said Price to these defendants, or either of them; neither these defendants, or either of them have any knowledge, information or belief as to the personal estate of deceased, except that said Price had at his death no personal estate or property whatever, as they believe, neither of these defendants has had or hath the possession, ownership or control of any personal estate whatever from their said father, or any knowledge of the existence anywhere of any such estate; neither have these defendants, or either of them, received any moneys from the Government of the U. S., either through their father, R. M. Price, or otherwise, under or by virtue of the act of 23 Feb., 1891, referred to in said bill.

[Here follows a copy of the act.]

But as to all moneys not actually received by said Price, in his lifetime, from the Government of the U. S. under said act, whether it be the \$23,000 mentioned in said bill or any other sum actually remaining unpaid to the said Price at his death, these defendants, together with the other heirs of said Price, deceased, referred to in said act, are entitled to thereunder by special designation in the said act, as his heirs, and the said moneys so remaining unpaid are in no way chargeable with the debts and liabilities of the said Price, deceased, or to any of his creditors, and that all such moneys so unpaid to the said Price, in his lifetime, are payable by the Government of the U. S. directly and exclusively to these defendants and the other heirs of the said Price, deceased, and for the benefit of the said heirs respectively, without claim upon the same by the complainant. The balance unpaid to the said Price in his lifetime, and to which these defendants, together with the other heirs of said deceased, are entitled as aforesaid, which balance these defendants say and believe is about \$23,000, is a part of the



sum referred to in said act as paid over to and receipted for by A. M. Van Nostrand, Acting Purser, Jan. 14, 1850.

That on or about 6 December, 1848, in the early settlement of California, said Price was assigned to duty upon the Pacific coast as Purser and Fiscal Agent of the U. S. for the Navy Department, he then being a Purser in the U. S. Navy, and acted as such to about December, 1849, or January, 1850, when he was detailed and ordered to transfer all public money and property remaining in his hands to his successor or such other disbursing officer as might be designated by the commanding naval officer of the Naval Station of California, and immediately after such transfer to report to Washington for settling his accounts. Afterwards, in December, 1849, A. M. Van Nostrand, referred to in said act, became the successor of said Price, in California, as Acting Purser in the Navy. About 31 December, 1849, Commodore Jones, U. S. N., commanding the squadron, directed Acting Purser Van Nostrand, aforesaid, to call on Purser Price and to receive from him all books, papers, office furniture and funds on hand belonging to the Purser's Department at San Francisco. In accordance therewith and with the instructions to said Purser Price, he paid over on the 31 December, 1849, to said Van Nostrand, Acting Purser, the sum of \$45,000, being all the public moneys of the U. S. in the hands of the said Purser Price. On 14 January, 1850, said Price, out of his private moneys alone and not of the Government of the U. S., advanced to said Van Nostrand \$75,000, and took his receipt thereof, as follows:

"SAN FRANCISCO, *January 14th*, 1850.

"Received from Rodman M. Price, Purser U. S. Navy, seventy-five thousand dollars for which I hold myself responsible to the United States Treasury Department, \$75,000. (Duplicate.)

"A. M. VAN NOSTRAND,

*"Acting Purser."*

Which advance was without the approval and signature of Commodore Jones, commanding officer of said acting purser, Van Nostrand, although the said Price regarded the advance as an accommodation to the Government of the U. S., at that time being in the early history of California.

Previous to the approval of the act aforesaid, and the adjustment of the accounts therein referred to, the Government of the U. S. had always declined upon request made

by the said Price, to pay or reimburse him for the said sum of \$75,000, or any part thereof. Said Van Nostrand never returned or paid the said money or any part thereof to the said Price; neither did he account for the sum to the Government of the U. S. Previous to 12th March, 1854, Hon. Caleb Cushing, then Attorney General of the U. S., in obedience to the request of the Secretary of the Navy, investigated the claim of said Price against U. S. for the reimbursement to him of said \$75,000, gave an opinion that the U. S. was not responsible for and could not be charged with the private funds paid by Price aforesaid to said Van Nostrand and without the written approval of said Commodore Jones, a copy of which opinion is annexed.

Previous to the opinion aforesaid said Price, had frequently claimed of the U. S. the payment of said \$75,000, but the government had always declined to pay the same; after said opinion the government of the U. S. continued to decline to pay the same, up to the approval of said Act, always denying and disputing the liability of the government to pay the same. These defendants say that said claim was not a lawful claim against the government of the U. S. for which it was lawfully liable; but in view of the fact that the money had been paid or advanced by said Price, as aforesaid, in the belief that it would be an accommodation to the Government in the condition of things that existed in the early history of California, and that said Price had become old, and had been in the service of the U. S. as a Purser in the Navy for many years, and also Governor of the State of New Jersey, and that it was equitable and just, apart from the question of the lawfulness of the claim, that he or his heirs mentioned in the said act should be paid said sum of \$75,000, said act was accordingly passed.

In accordance with said act the Secretary of the Treasury, about the month of August, 1892, adjusted the accounts of said Price, late Purser U. S. N. and Acting Navy Agent at San Francisco, California, crediting him with said sum of \$75,000, leaving the sum of \$76,204.08 found due him; said Price, upon such adjustment, according to the intent and meaning of the said act, which sum includes the whole of said \$75,000 as a part thereof, of which these defendants admit the said Price, in his lifetime, actually received four drafts from the U. S. and the money therefor, amounting to \$45,204.08, and that the balance thereof of \$31,000, which is part of the said \$75,000 after deducting any other sum

actually paid to the said Price, thereon in his lifetime by the U. S., these defendants, heirs, together with the other heirs aforesaid, are entitled to as aforesaid by virtue of said act of Congress and adjustment aforesaid.

All which matters and things defendants aver to be true, &c., &c.

BEDLE, MCGEE & BEDLE,  
*Solicitors, &c.*

[Here follows, *in extenso*, the opinion of Attorney General Cushing, dated 12th March, 1854, as printed in vol. 6, Reports of the Attorney General, pp. 357-368, ending viz]:

\* \* \*

1. That the appointment of Van Nostrand as acting purser by Com. Jones was lawful and valid under the circumstances, and that the subsequent disapproval of the appointment of Mr. Secretary Preston could not retroact to make void previous lawful acts of the acting purser, in his receipt from Mr. Price of public money and other public property, in obedience to the order of Com. Jones.

2. That the Government is not responsible for and cannot be charged with the private funds paid by Mr. Price to Van Nostrand.

The affidavits of Madeline Price and Gouverneur Price are attached to the plea.

A plea identical with this plea was filed by Francis Price, Rodman M. Price and E. Trenchard Price.

1895, July 29. Defendants pleas overruled with costs, and defts. ordered to answer bill within thirty days.

August 5. Defts. appeal from order overruling pleas.

1896, March 2. Decree of Court of Errors and Appeals affirming the order of the Court of Chancery, and remitting record to the Court of Chancery.

#### OPINION.

1. A statute of the United States which authorizes and directs the Secretary of the Treasury of the United States to adjust the accounts of a former Purser in the Navy, upon principles of equity and justice, and credit him with a sum of money paid over to and receipted for by his successor in office, although such payment was without governmental

authority, and directing the payment of the sum that may be found due him upon such adjustment, to him "or his heirs," is not a statute which bestows a mere gratuity or bounty, but it is the restitution of property which once belonged to him as assets for the liquidation of his pecuniary obligations, and upon its restoration it can not be held to have assumed a new character. The words "or his heirs" are simply words of succession and descriptive of his estate in the money found to be due him, and used in the statute in the sense of personal representatives, and intended to secure the moneys to his estate, in the event of his death before they were paid.

2. The assignment of a claim against the United States, ordered by the court of chancery to be made by a debtor, or his representatives if he be deceased, to a receiver in aid of proceedings in said court by a creditor to obtain satisfaction of a judgment at law recovered against the debtor, is not prohibited by and is not a nullity under the provisions of Section 3477 of the Revised Statutes of the United States.

3. Such an assignment to the receiver or an assignment to him by operation of law in such proceedings, by virtue of his appointment as receiver, vesting in him, under the powers with which he is clothed, the right to take, receive, sue for and distribute according to law, and the orders of the court from which he derives his appointment, is an exception to the provisions of Section 3477 of the Revised Statutes of the United States requiring assignments of such claims, or power of attorney to receive the same, to be acknowledged by the persons executing them, and to be certified by the officer taking such acknowledgments.

4. The objects of Section 3477 of the Revised Statutes of the United States are that the Government may not be harassed by multiplying the number of persons with whom it has to deal, and that it might always know with whom it was dealing until a contract is completed and an adjustment and settlement made; and none of these evils can happen upon an assignment for the benefit of the creditors of a claimant, either expressly ordered to be made by a court having jurisdiction or resulting by operation of law.

5. The court of chancery has jurisdiction to determine the right of the distribution of such claim in payment and satisfaction of a judgment debt due from the claimant to his cred-

itors, whenever the proper parties are before the court and the point decided be within the issues made by the pleadings.

[Opinion, by LIPPINCOTT, J., follows.]

June 19. Order of chancellor making the decree of the court of errors and appeals the decree of his court.

#### ANSWER.

The joint and several answer of Madeline Price, Gouverneur Price, Francis Price, Rodman M. Price and E. Trenchard Price, to the bill in the nature of a bill of revivor of Anna M. Forrest, administratrix of Samuel Forrest, deceased, and Charles Borchering, receiver, appointed by this court in a case in this court wherein the said Anna M. Forrest was complainant, and Rodman M. Price, now deceased, and his wife, Matilda Price, were defendants.

These defendants respectively for answer, &c., say :

#### I.

The said Madeline Price, Gouverneur Price, Francis Price, Rodman M. Price and E. Trenchard Price are the only children and next of kin and heirs of the said Rodman M. Price, deceased.

#### II.

Admit the filing of the original bill, and answer thereto ; the petition in that cause ; the issuing of the order to show cause, founded on the petition ; the appointment of Borchering as receiver ; his giving bond, and the restraining order, as alleged.

Have no knowledge whether said Price received the moneys alleged to have been drawn by him from the Assistant Treasurer of the U. S., but are informed and believe that moneys to amount mentioned were drawn ; whether received by Price or not they do not know ; they allege that none of these moneys were received by these defendants or any of them, either during the lifetime of said Price, or since his death.

Admit that said Price did not comply with the demands of said order, by delivering over any drafts or money to said receiver, that proceedings were taken against him in the court of chancery, for contempt of court in not obeying said order, and that judgment of contempt was entered

therein, that the said Price was very ill at the time said order was made, and that he afterwards died, at date named in the bill, without such order having been executed.

Admit that no will of said Price has been presented to any probate court, and say that no will was left by him so far as they know, or have any reason to believe; that no letters of administration have been issued; that he left no estate, so far as they know or have any reason to believe; that nothing has ever come to them; that no property, real or personal, has ever come to them, or any of them, from his estate, and there is no property of his estate, to come to them of which they are aware.

Admit that complainants are without remedy for the recovery of the money alleged to be due from said Price, if there be any such money due, and deny that they can, by any proceeding in this court, sequester the moneys in the Treasury of the U. S. for reasons thereafter stated.

As to what is the disposition of the Treasury Department of the U. S., or whether demand has been made on the officers of that department, as alleged, defendants have no knowledge.

Admit that after the death of said Price they executed a power of attorney to said Fay, of Washington, counsellor at law, for the purpose of collecting for them the moneys in the Treasury; assert that they were by law entitled so to do, and charge that they are now entitled to receive from Treasury moneys remaining which are parcel of the moneys awarded by Act of Congress; allege that at death of said Price debt's became entitled under the Act to all the moneys then remaining in the Treasury as original takers; further are advised and charge that there is no jurisdiction in the court to sequester the moneys remaining in the Treasury and awarded under the Act; that the only persons to whom the same can legally be paid are these debt's, or such persons as may hold an assignment thereof, freely made by these debt's in accordance with, and having all the formalities required by the laws of the U. S.

Deny that the appointment of said receiver and order appointing him worked a legal assignment by the said Price to complainant Borchering, or conveyed to him any of the rights of any of the takers under said act.

Admit that it was contended on argument of original cause that under a proper construction of said Act, said moneys in case of death of said Price, passed to his children

as original takers under the description of heirs at law; that such contention was correct and should have been adopted by the court.

With reference to allegation that the action of the court and orders in original cause were made known to debt's, they deny the allegation and say that while they had knowledge of proceedings in a general way, they did not have specific knowledge, nor what orders were being made, nor anything but general knowledge that a suit was being prosecuted against their father to recover these moneys; their action after his death was by reason of belief in their rights as original takers under the Act,—for recovering that which by law was their right.

Deny disobedience; say they were not advised of original suit, not served with process in the case and not, except in a general way, advised of its existence; deny that the order to convey to Borchering was binding on them or concluded their rights; deny that their action was any contempt of court, or that they were under any obligation to apply to this court in reference to these moneys.

Further answering defendants say the facts are as follows:

That said Rodman M. Price, late of Bergen County, in the State of New Jersey, departed this life on 7 June, 1894, intestate leaving him surviving [thence follows a repetition of the language of the plea, word for word, with the letter of Att'y General Cushing appended as set out on pp. 20-23 of this record]. \* \*

#### FINAL DECREE OF CHANCELLOR.

Between

ANNA M. FORREST, widow and administratrix of Samuel Forrest, deceased, CHARLES BORCHERLING, receiver, *Complainants,*  
and

RODMAN M. PRICE, FRANCIS PRICE, MADELINE PRICE, GOUVERNEUR PRICE, E. TRENCHARD PRICE and JOHN C. FAY, *Defendants.*

On remittitur from the court of errors and appeals in the last resort in all causes.

This cause coming on to be heard on bill and answer at the May Term of the year, eighteen hundred and ninety-six, of the court of chancery, in the presence of Mr. Cort-

landt Parker, of counsel with the complainants, and Mr. Flavel McGee, of counsel with the defendants, and the pleadings having been read, and the Court being of opinion that the complainants are entitled to the relief prayed in so far as it relates to the collection by the defendants of the moneys mentioned in the bill of complaint and still in the Treasury of the United States. It is now ordered and decreed, that the said defendants, and each of them, be, and they hereby are perpetually enjoined and restrained from making any demand upon or application to the Government of the United States, or the Secretary of the Treasury of the United States, or any officer of the said Treasury, or from receiving from the United States, or its said Secretary of the Treasury or any officer thereof, any part of the money remaining in the Treasury of the United States at the time of filing said bill of complaint, and which was awarded to Rodman M. Price, deceased, as in the said bill stated, or now there remaining; and that the said defendants likewise pay to the complainants or their solicitors their costs, to be taxed in this cause.

Dated the twenty-fifth day of June, one thousand eight hundred and ninety-six.

ALEX. T. MCGILL.

On motion of

CORTLANDT & WAYNE PARKER,

*Solicitors of said complainants.*

Filed August 30, 1896.

1896, Nov. 2. Appeal of defendants to Court of Errors and Appeals.

#### FINAL DECREE OF COURT OF ERRORS AND APPEALS.

Court of Errors and Appeals in the last resort in all causes.

Between RODMAN M. PRICE *et. als.*, De-  
fendants,  
*and*

ANNA M. FORREST, Admin'r of Samuel  
Forrest, Dec'd, CHARLES BORCHERLING,  
*et. al.*, Respondents.

} On appeal from  
Chancery on  
final decree.

This cause having come on to be heard at the November term of this court last past, and the same having been argued by Mr. Flavel McGee of counsel for the appellants and



Mr. Cortlandt Parker of counsel for the respondents, and the matters involved having been duly considered by the court, it is now on this eleventh day of January, one thousand eight hundred and ninety-seven, on motion of Cortlandt and Wayne Parker, solicitors and of counsel for the respondents, ordered, adjudged and decreed that the decree of the chancellor from which appeal to this court was taken be and the same is hereby in all things affirmed, with costs to be taxed, and that the record be remitted to the court of chancery to proceed therein and therewith according to law.

Endorsed, Filed Jan. 11, 1897.

HENRY C. KELSEY, *Clerk.*

#### OPINION.

The opinion of the court was delivered by LIPPINCOTT, J. :

This appeal from the final decree of the court of chancery in this cause brings up for decision the rights of the parties under the Act of Congress set out in the pleadings and under Section 3477 of the Revised Statutes of the United States.

These questions having been passed upon in the opinion of this court, on the appeal from the decree of the chancellor overruling the pleas of the defendants in this cause, 35 Atlantic Reporter, 1075, the decree now appealed from, for the reasons there given, must be affirmed with costs.

"Filed Apr. 22, 1897.

GEORGE WURTS, *Clerk.*"

Certificate of Sec. of State and ex-officio clerk, etc., that the foregoing is a full, true and complete copy of the record 22 April, 1897, under seal.

#### ASSIGNMENT OF ERRORS.

Afterwards, that is to say, on the sixth day of May, eighteen hundred and ninety-seven, in the Supreme Court of the United States comes the said Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price and E. Trenchard Price, Plaintiffs in Error, by Flavel McGee, their solicitor, and say that in the record and proceedings aforesaid, and in the decree aforesaid given in the Court of Errors and Appeals in the last resort in all causes in New Jersey, there is manifest error in this, to wit :

That said Court of Errors and Appeals in the last resort in all causes in New Jersey, decreed that the decree of the

Chancellor from which appeal to said court was taken be and the same was thereby in all things affirmed with costs to be taxed, whereas by law said court should have decreed that said decree of the Chancellor be reversed with costs to be taxed.

There is also manifest error in this, to wit, that said Court of Errors and Appeals decreed that said decree of the Chancellor which decreed that said defendant, these plaintiffs in error, and each of them be and they thereby were perpetually enjoined and restrained from making any demand upon, or application, to the Government of the United States, or the Secretary of the Treasury of the United States, or any officer of the said Treasury, or from receiving from the United States, or its said Secretary of the Treasury, or any officer thereof, any part of the money remaining in the Treasury of the United States at the time of filing the said bill of complaint, and which was awarded to said Rodman M. Price as in said bill stated or there remaining.

Whereas by law said court should have decreed that said decree be reversed, said final injunction dissolved, and said bill of complaint dismissed.

There is also manifest error in this, to wit, that the said Court of Errors and Appeals decreed that said decree of the chancellor, which decreed that these plaintiffs in error pay to the complainants or their solicitors their costs to be taxed.

Whereas by law said court should have decreed that said decree be reversed, and that said complainants pay to these plaintiffs in error their costs of said suit.

There is also manifest error in this, to wit, that said Court of Errors and Appeals by said decree decided that under the Act of Congress entitled "An Act for the relief of Rodman M. Price," approved February 23, 1891, and which is set out in full in the answer filed by these plaintiffs in error in the Court of Chancery of New Jersey, *pro ut* the case, the money therein mentioned was intended to benefit the estate of Rodman M. Price, and to be within the reach of his creditors, and that the heirs of said Rodman M. Price, deceased, were not thereby personally intended to be the beneficiaries of the United States by way of gift or gratuity to them as such.

Whereas by law said court should have decided that under said Act the money therein mentioned was intended to be for the benefit of said Rodman M. Price, now deceased, if, and in so far as, the same was paid to him during his

life, and for the benefit of his heirs as original takers, in so far as the same was not paid to him during his life.

There is also manifest error in this, to wit, that said Court of Errors and Appeals by said decree decided that the heirs of said Rodman M. Price deceased were subject to the jurisdiction of said court in the premises, and that that court can treat them as if they were in the possession of said money in order to compel them to assign it to the receiver appointed in said suit, or to give effect to such assignment to him by operation of law ;

Whereas by law said court should have decided that these plaintiffs in error, as such heirs of Rodman M. Price, were original beneficiaries under said Act, and were not subject to the jurisdiction of the court for the enforcement of the judgment against the said Rodman M. Price deceased and could not be compelled by said court to assign it to a receiver appointed in said suit, or to give an effect to such an assignment.

There is also manifest error in this, to wit, that said Court of Errors and Appeals by said decree decided that an assignment of the claim of these plaintiffs in error to said moneys, made by the order or decree of said court, against the will of these plaintiffs in error, and without the formalities required by Section 3477 of the Revised Statutes of the United States, is valid :

Whereas by law said court ought to have decided that an assignment so made, without said formalities, is void.

There is also manifest error in this, to wit, that said court of errors and appeals by said decree decided that the receiver appointed in said suit in equity took title to said moneys from said Rodman M. Price, deceased, or the defendants, these plaintiffs in error, by operation of law, and that the title thereto of said Rodman M. Price, deceased, or the defendants, these plaintiffs in error, was vested in him by operation of law ;

Whereas by law said court ought to have decided that no title could be legally vested in him by decree of said court, but that any assignment or transfer so made would, under Section 3477 of the Revised Statutes of the United States, be void.

There is also manifest error in this, to wit, that said Court of Errors and Appeals by said decree decided that a transfer of said moneys, made to said receiver against the

will of the said plaintiffs in error, and without the formalities required by Section 3477 of the Revised Statutes of the United States, was a transfer made by operation of law and valid ;

Whereas by law said Court ought to have decided that a transfer so made would not be by operation of law, and was void.

There is also manifest error in this, to wit, that these plaintiffs in error in and by their said answer in said cause claimed, under said Act therein recited, entitled, "An Act for the relief of Rodman M. Price," that they were entitled to the balance of the said moneys in the Treasury of the United States therein mentioned, as original takers under said Act, and said Court of Errors and Appeals by said decree decided that they were not such original takers under said Act;

Whereas by law said Court ought to have decided that they were.

There is also manifest error in this, to wit, that these plaintiffs in error in said cause specially set up and claimed under said Act entitled "An Act for the relief of Rodman M. Price," in their said answer recited, a right, under said statute to receive the moneys therein mentioned, from the United States, and the said decision of the said Court of Errors and Appeals was against said right so specially set up and claimed by these plaintiffs in error.

And there is also manifest error in this, to wit, that in said suit, these plaintiffs in error, under Section 3477 of the Revised Statutes of the United States, specially set up and claimed that no transfer or assignment of their said claim for said moneys upon the United States, or any part thereof, could be validly ordered by said court against their will, nor without the formalities mentioned in said Section 3477 of the Revised Statutes of the United States, and the said Court of Errors and Appeals by its said decree decided against said right so specially set up and claimed by these plaintiffs in error.

Wherefore the said plaintiffs in error pray that the decree aforesaid, by reason of the errors aforesaid, and for other errors appearing in the record and proceedings aforesaid, may be reversed, annulled, and for nothing holden, and

that the said the plaintiffs in error may be restored to all things they have lost on occasion of said decree.

FLAVEL MCGEE,

*Attorney for and of Counsel with the Plaintiffs in Error.*

Approved:

ALEX. T. MCGILL,

*Chancellor, Presiding Judge of the Court of Errors and Appeals in the last resort in all causes in New Jersey.*  
(Endorsed.)

BOND.

SUPREME COURT OF THE UNITED STATES.

RODMAN M. PRICE, MADELINE PRICE, GOV-  
ERNEUR PRICE, FRANCIS PRICE and  
E. TRENCHARD PRICE, Plaintiffs in  
Error,

vs.

ANNA M. FORREST and CHARLES BOR-  
CHERLING, Defendants in Error.

*Know all men by these presents, that we, Rodman M. Price, of Brooklyn, New York, and Anderson Price, of Rutherford, Bergen County, New Jersey, are held and firmly bound unto Anna M. Forrest and Charles Borchering in the sum of five hundred dollars, to be paid to the said Anna M. Forrest and Charles Borchering, their executors or administrators, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents.*

Sealed with our seals, and dated this seventh day of April, A. D. one thousand eight hundred and ninety-seven.

Whereas, lately at a term of the Court of Errors and Appeals in the last resort in all causes in and for the State of New Jersey, in a suit depending in said court between Anna M. Forrest and Charles Borchering, complainants and respondents, and Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price and E. Trenchard Price, defendants and appellants, judgment was rendered against the said Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price and E. Trenchard Price, appellants, and the said Rodman M. Price, Madeline Price, Gouverneur Price, Francis

Price and E. Trenchard Price, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Anna M. Forrest and Charles Borchering citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington, the sixth day of May, next.

Now the condition of the above obligation is such, that if the said Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price, and E. Trenchard Price, shall prosecute their said writ or error to effect and answer all costs if they fail to make their plea good, then the above obligation to be void, otherwise to remain in full force and virtue.

RODMAN M. PRICE. [L. S].  
ANDERSON PRICE. [L. S].

Sealed and delivered in the presence of—

KENNETH FOWLER.

STATE OF NEW JERSEY, } ss:  
County of Bergen,

Anderson Price, of full age, being duly sworn on his oath saith, that he owns real estate in Rutherford, Bergen County, New Jersey, worth upwards of One Thousand Dollars, over and above all incumbrances, and over and above all his just debts and liabilities.

ANDERSON PRICE.

Sworn and subscribed this ninth day of April, 1897, before me,

FRANCIS H. MCGEE,  
*A Notary Public of New Jersey.*

(Endorsed:) Approved by Alex. T. McGill, Chancellor, Presiding Judge of the Court of Errors and Appeals in the last resort in all causes in New Jersey.

Filed:

UNITED STATES OF AMERICA, ss:

To Anna M. Forrest and Charles Borchering, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the sixth day of May next, pursuant to a writ of error filed in the clerk's office of the Court of Errors and Appeals in the last resort in all causes in the State of

New Jersey, wherein Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price and E. Trenchard Price, are plaintiffs in error, and you, Anna M. Forrest and Charles Borchering are defendants in error, to show cause, if any there be, why the decree in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Alexander T. McGill, Chancellor, presiding judge of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, this seventh day of April, in the year of our Lord, one thousand eight hundred and ninety-seven.

ALEX. T. MCGILL,  
*Chancellor, Presiding Judge of the Court of Errors and Appeals  
in the last resort in all causes in the State of New Jersey.*

[Endorsed:] Filed.

Without waiver of any legal exception to the form thereof service on the defendants in error of this citation and of a copy of the writ of error in the case acknowledged this 13th day of April, 1897.

CORTLANDT AND WAYNE PARKER,  
*Attorneys of Defendants in Error.*

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judges of "The Court of Errors and Appeals in  
[L. s.] the last resort in all causes" in the State of New Jersey, greeting:

Because in the record and proceedings, as also in the rendition of the judgment, of a plea which is in the said Court of Errors and Appeals in the last resort in all causes before you, being the highest court of the said State in which a decision could be had in the said suit between Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price and E. Trenchard Price, appellants and plaintiffs in error, and Anna M. Forrest and Charles Borchering the defendants in error, wherein is drawn in question the validity of a statute of, and of an authority exercised under, the United States, and the decision was against their validity; and wherein was drawn in question a title, right, privilege and immunity claimed by the plaintiffs in error under a statute of the United States, and the decision was against the title,

right, privilege and immunity specially set up and claimed by the plaintiffs in error under such statute, a manifest error hath happened, to the great damage of the said Rodman M. Price, Madeline Price, Gouverneur Price, Francis Price and E. Trenchard Price, the said appellants and plaintiffs in error, as by their complaint appears we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at Washington, on the sixth of May next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the seventh day of April, in the year of our Lord, one thousand eight hundred and ninety-seven.

S. D. OLIPHANT,  
*Clerk of the Circuit Court of the United States for the District in New Jersey, Third Circuit.*

Allowed by ALEX. T. MCGILL,  
*Chancellor, Presiding Judge of the Court of Errors and Appeals in the last resort in all causes in New Jersey.*

The answer of the Judges of the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey within named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Supreme Court of the United States in a certain schedule to this writ annexed, as within commanded.

ALEX. T. MCGILL,  
*Chancellor, Presiding Judge of the Court of Errors and Appeals in the last resort in all causes in New Jersey.*

[Endorsed :]

Certificate of ——— Clerk of ———



(Filed May 10, 1897.)

STATE OF NEW JERSEY, COURT OF ERRORS AND APPEALS, NOV.  
TERM, 1896.

IN THE CASE OF RODMAN M. PRICE }  
                                  *and* } On Appeal.  
                                  ANNA M. FORREST.

No. 64 of Nov. Term, 1896. Date 11 Jan'y, 1897.

DAVID A. DEPUE, presiding.

Opinion by Judge Lippincott.

*Check list.*

AFFIRM. The Chief Justice, Garrison, Gummere, Lippincott, Ludlow, Magie, Van Syckel, Barkalow, Bogert, Dayton, Hendrickson, Krueger, Nixon, total 13.

REVE'L.

Filed Jan'y 11, 1897. Henry C. Kelsey, clerk. Certificate of George Wurts, Secretary of State, 5th May, 1897.